Supreme Court, U.S.
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No. 01-631

In The
Supreme Court of the United States

UNITED STATES OF AMERICA,
Petitioner,

vs.

CHRISTOPHER DRAYTON AND
CLIFTON BROWN, JR.
Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS,
ELEVENTH CIRCUIT

BRIEF AMICI CURIAE OF AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC., THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, AND THE NATIONAL SHERIFFS' ASSOCIATION IN SUPPORT OF PETITIONER.

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15pp

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Brief

AELE *Amicus Curiae* Brief in *Florida v. Bostick*,
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This brief is filed pursuant to Rule 37 of the United States Supreme Court. Consent to file has been granted by respective Counsel for the Petitioner and Respondents. The letters of consent have been filed with the Clerk of this Court, as required by the Rules.[1]

INTEREST OF *AMICI CURIAE*

Americans for Effective Law Enforcement, Inc. (AELE), as a national not-for-profit citizens organization, is interested in establishing a body of law making the police effort more effective, in a constitutional manner. It seeks to improve the operation of the police function to protect our citizens in their life, liberties, and property, within the framework of the various state and federal constitutions.

AELE has previously appeared as *amicus curiae* over 100 times in the Supreme Court of the United States and over 35 times in other courts, including the Federal District Courts, the Circuit Courts of Appeal and various state courts, such as the Supreme Courts of California, Illinois, Ohio, and Missouri.

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[1] As required by Rule 37.6 of the United States Supreme Court, the following disclosure is made: This brief was authored for the *amici* by James P. Manak, Esq., counsel of record, Wayne W. Schmidt, Esq., Executive Director of Americans for Effective Law Enforcement, Inc., and Carl Milazzo, Assistant Executive Director of Americans for Effective Law Enforcement, Inc. No other persons authored this brief. Americans for Effective Law Enforcement, Inc., made the complete monetary contribution to the preparation and submission of this brief, without financial support from any source, directly or indirectly.

The International Association of Chiefs of Police, Inc. (IACP), is the largest organization of police executives and line officers in the world. Founded in 1893, the IACP, with more than 17,000 members in 112 countries, is the world's oldest and largest association of police executives. IACP's mission, throughout the history of the association, has been to identify, address, and provide solutions to urgent law enforcement issues.

The National Sheriffs' Association (NSA), is the largest organization of sheriffs and jail administrators in America, consisting of over 40,000 members. It conducts programs of training, publications, and related educational efforts to raise the standard of professionalism among the nation's sheriffs and jail administrators. While it is interested in the effective administration of justice in America, it strives to achieve this while respecting the rights guaranteed to all under the Constitution.

Amici are national associations representing the interests of law enforcement agencies at the state and local levels. Our members include: (1) law enforcement officers and law enforcement administrators who are charged with the responsibility of overseeing investigative stops and consensual interactions between law enforcement officers and members of the public; and (2) police legal advisors who, in their criminal jurisdiction capacity, are called upon to advise law enforcement officers and administrators in connection with such matters, including the formulation and implementation of training and policy on the subject.

Because of the relationship with our members and the composition of our membership and directors, including active law enforcement administrators and

counsel, we possess direct knowledge of the impact of the ruling of the court below, and we wish to impart that knowledge to this Court.

STATEMENT OF THE CASE

The court below, *United States v. Drayton*, 231 F.3d 787 (11th Cir. 2000), reversed the narcotics convictions of the respondents, passengers on an interstate bus, who agreed to a pat-down search by police officers who boarded the bus when it stopped at a bus station in Florida.

Three officers boarded the bus, with two walking to the back while the third knelt in the driver's seat facing the passengers. The two officers walked up the aisle from the rear, talking to passengers about their destinations and saying that they were conducting a "bus interdiction" in an effort to find drugs and weapons. None of the officers blocked the aisle of the bus, issued verbal orders, or said or did anything to prevent passengers from leaving the bus. The respondents, who were seated together, allowed the officers to search their overhead luggage, which contained nothing illegal.

The officers, who noticed that the men were wearing heavy, baggy clothing on a hot day, then asked permission to conduct a pat-down search. They received permission, and detected objects on the men's legs that resembled packages of drugs. Both men were arrested and taken off the bus. A further search revealed packages of cocaine taped inside multiple pairs of respondents' underpants.

In reversing their convictions, the court below held

that "these defendants' consent was not sufficiently free of coercion to serve as a valid basis for a search." The court said respondents were not informed that they were free to leave and that because of the presence of the third officer at the front of the bus, a "reasonable person" would not have felt free to leave.

Certiorari was taken by this Court on the question: Has officer who informs passenger on bus that officer is conducting drug and illegal weapons interdiction and asks passenger for consent to search, while another officer stays at front of bus without blocking exit, effected "seizure" of that passenger within meaning of Fourth Amendment and *Florida v. Bostick*, 501 U.S. 429 (1991)?

SUMMARY OF ARGUMENT

Amici take the position that under the Court's precedent in *Florida v. Bostick*, 501 U.S. 429 (1991) and *I.N.S. v. Delgado*, 466 U.S. 210 (1984), respondents were not seized within the meaning of the Fourth Amendment when they voluntarily consented to a search. In addition to failing to apply these precedents, the court below has, in effect, constructed a Fourth Amendment warning requirement before a person may consent to a search of his property or person. This rule contradicts established precedent in *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973) and *Ohio v. Robinette*, 519 U.S. 33 (1996).

Amici note that law enforcement administrators have adopted training and policy that conforms to this Court's rulings in these cases. The majority of the federal and state courts have conformed to this Court's interpretation of the Fourth Amendment in *Bostick*,

Delgado, *Schneckloth*, and *Robinette*. The court below, however, has chosen to deviate from these rulings, setting up a situation where administrators and legal advisors now have conflicting rules to deal with drug and weapons interdiction in public transportation settings.

It is important and significant that when this Court defines legal parameters, officers are trained to follow the law and policies are drafted to conform with the law. While "bright line" rules, *New York v. Belton*, 453 U.S. 454 (1981), are not always possible, training and policies strive to mirror the rulings of this Court. Yet when an appellate court simply refuses to follow the rules, officers then run the risk of false arrest lawsuits and are discouraged from following the actual law because they have now been told by a lower court that what they are doing is wrong.

As police administrators and related officials, *amici* point to the need for a clear statement from the Court on the propriety of such actions by local and state law enforcement officers so that uniform and consistent policies and rules can be adopted and implemented by law enforcement agencies. This need is underscored by the existence of conflict created by the decision of the court below.

ARGUMENT

A LAW ENFORCEMENT OFFICER WHO INFORMS A PASSENGER ON A BUS THAT THE OFFICER IS CONDUCTING DRUG AND ILLEGAL WEAPONS INTERDICTION AND ASKS THE PASSENGER FOR CONSENT TO SEARCH, WHILE ANOTHER OFFICER STAYS AT THE FRONT OF THE BUS WITHOUT BLOCKING THE EXIT, HAS NOT EFFECTED A "SEIZURE" OF THAT PASSENGER WITHIN THE MEANING OF THE FOURTH AMENDMENT AND NEED NOT ADVISE THE PASSENGER OF HIS RIGHT TO REFUSE CONSENT.

The Fourth Amendment protects against unreasonable "seizures." This Court has often addressed whether, and under what circumstances, a police-citizen encounter rises to the level of a Fourth Amendment "seizure." In *Terry v. Ohio*, 392 U.S. 1 (1968), the Court held that a "seizure" occurs only when an officer, by means of physical force or show of authority, has in some way restrained the liberty of a person. In *California v. Hodari*, 499 U.S. 621 (1991), this Court ruled that if a reasonable person would feel free to disregard the police and go about his business, the encounter is consensual and not governed by the Fourth Amendment. Consensual encounters have been approved by this Court in *Florida v. Rodriguez*, 469 U.S. 1 (1984) (request to examine identification), and *United States v. Mendenhall*, 446 U.S. 544 (1980) (request for consent to search luggage).

In *Florida v. Bostick*, 501 U.S. 429 (1991)[1] the Court considered the application of these principles in the context of bus interdiction efforts. Law enforcement authorities often station police officers at "airports, train stations, and bus depots," and "[l]aw enforcement officers stationed at such locations routinely approach individuals, either randomly or because they suspect in some vague way that the individuals may be engaged in criminal activity, and ask them . . . questions"; sometimes, they also ask for consent to perform searches. *Bostick*, 501 U.S. at 431. *Bostick* involved the boarding of buses at scheduled stops and asking passengers for permission to search their luggage for narcotics.

Amici believe that an officer's introduction of himself and announcement of his law enforcement mission is not by itself a sufficient basis for finding a Fourth Amendment seizure, even when that occurs on a bus.

Bostick makes clear that a seizure occurs only when an officer invokes his legal authority by issuing commands or otherwise communicating to the person that he is not free to go or to decline cooperation and thereby restrains the person's liberty. While the police may not "demand of passengers their 'voluntary' cooperation" through "an 'intimidating show of authority,'" such as pointing their weapons at people or otherwise engaging in conduct that might overbear the

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[1] AELE filed an *amicus curiae* brief in *Bostick* expressing concerns about possible police abuses in bus interdiction programs. Those abuses have not materialized and with the exception of the 11th Circuit Court of Appeals, the law has become settled and clear since *Bostick* was decided.

passengers' will, 501 U.S. at 438, merely identifying oneself and showing a badge, so that the person understands that he is communicating with the police rather than dealing with possibly illegal conduct by strangers, does not constitute coercion under the Fourth Amendment. See *Florida v Rodriguez*, 469 U.S. 1 (1984); *I.N.S. v. Delgado*, 466 U.S. 210 (1984).

Another factor relied on by the court below—the presence of a single officer in the bus driver's seat, near the exit, looking backward to ensure officer safety while two officers talked to the bus passengers—also does not support a finding of a seizure. In *Delgado* there were multiple officers stationed near the exits of a factory while federal agents walked through the factory checking the immigration status of employees, yet this Court expressly rejected the suggestion that their presence converted the otherwise consensual interactions within the factory into Fourth Amendment seizures.

Perhaps the most significant departure of the court below from established precedent is its construction, in effect, of a rule that law enforcement officers in these settings must warn persons of their right to refuse a consent to search. This concept was rejected by this Court in *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973) ("[W]hile the subject's knowledge of a right to refuse [to consent] is a factor to be taken into account, the prosecution is not required to demonstrate such knowledge as a prerequisite to establishing a voluntary consent." 412 U.S. at 231). More recently it was rejected in *Ohio v. Robinette*, 519 U.S. 33 (1996), where this Court reversed the Ohio Supreme Court's holding that the Fourth Amendment required a police officer to advise a person, who had been lawfully detained for a traffic stop, that he was "free to go" before his consent to the officer's request

to search his car could be recognized as voluntary. The Court said, "we have consistently eschewed bright-line rules" in the Fourth Amendment context and explained that *Schneckloth* had "previously rejected a per se rule very similar" to the one adopted by the state supreme court in that case. 519 U.S. at 39.

While *amici* agree that bright line rules are not always possible or desirable, law enforcement officers need guidance through training and policy consistent with *Bostick, Schneckloth, Robinette,* and other precedents of this Court. This case involves no more than the actions of two police officers talking to bus passengers in a non-intimidating, non-threatening manner, while a third officer positioned himself at the front of the bus in a seat to check that the officers in the rear were safe and not blocking the aisle or otherwise preventing anyone from leaving the bus. There were no commands given and no general announcement of a coercive nature. Under *Bostick* and *Delgado* it is clear no Fourth Amendment seizure took place. Under *Schneckloth* and *Robinette* it is clear that no Fourth Amendment warnings were required. "Clear," except in the 11th Circuit where different rules now apply.

Amici believe that consensual interactions between police officers and people on public transportation are an essential part of the law enforcement effort to combat the flow of illegal narcotics and weapons. Without them, law enforcement efforts will be greatly diminished.

If the police are required to warn persons on public transportation of their right to refuse consent, it will be necessary to create policies and forms to implement such procedures and create an evidentiary basis for establishing the advisement and waiver. In a bus, train,

or airport scenario, it would require officers to follow procedures that would greatly increase the administrative and operational burden of screening and interacting with passengers. It would discourage law enforcement officers from engaging in consensual contacts with the public and could result in the non-interdiction of drugs and weapons. It would also greatly inconvenience those who use public transportation and lead to inordinate delays at public transportation facilities and conveyances.[1]

State and local law enforcement officers need a clear statement from this Court reiterating the application of *Bostick* and other precedents to interactions between law enforcement officers and the public on public transportation in order to facilitate training and policy on the subject.

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[1] Of course, states are free to establish such rules as the result of interpreting state constitutional provisions. *Oregon v. Hass*, 420 U.S. 714 (1975); *Michigan v. Long*, 463 U.S. 1032 (1983); *State v. Johnson*, 68 N.J. 349, 346 A.2d 66 (1975) (under state constitution it must be shown that consenting party had knowledge of right to refuse); *State v. Hardaway*, 2001 MT 252, 36 P.3d 900 (Mont. 2001) (state constitution granting citizens a specific right to privacy assures citizens a greater right to privacy and broader protections than does federal constitution in the area of searches incident to arrest). But this Court has made it clear that the Fourth Amendment does not require warnings for a consent to search. *Schneckloth v. Bustamonte, supra; Ohio v. Robinette, supra.*

CONCLUSION

Amici urge this Court to uphold the constitutionality of the police conduct involved in this case and similar actions of law enforcement officers on public transportation, on the basis of the Court's precedents and sound judicial policy.

Respectfully submitted,

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